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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Report of the Working Group on Arbitrary Detention

Addendum

Decisions and opinions adopted by the Working Group on Arbitrary Detention

1. The present document contains the decisions adopted by the Working Group on Arbitrary Detention at its seventeenth session, held in November/December 1996, and - pursuant to the decision adopted by the Working Group, as announced by its Chairman-Rapporteur at the fifty-third session of the Commission, to render opinions rather than adopt decisions - the opinions adopted at its eighteenth session, held in May 1997, and at its nineteenth session, held in September 1997.

2. A table listing all the opinions adopted by the Working Group in 1997 and as the statistical data concerning these opinions are included in the main report of the Working Group.

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DECISION No. 37/1996 (NIGERIA)

Communication addressed to the Nigerian Government on 11 July 1996.

Concerning: Annimmo Bassey, George Onah and Rebecca Onyabi Ikpe, on the one hand and the Federal Republic of Nigeria, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. With a view to taking a decision the Working Group considers if the cases in question fall into one or more of the following three categories:

I. Cases in which the deprivation of freedom is arbitrary, as it manifestly cannot be linked to any legal basis (such as continued detention beyond the execution of the sentence or despite an amnesty act, etc.); or

II. Cases of deprivation of freedom when the facts giving rise to the prosecution or conviction concern the exercise of the rights and freedoms protected by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (for States parties); or

III. Cases in which non-observance of all or part of the international provisions relating to the right to a fair trial is such that it confers on the deprivation of freedom, of whatever kind, an arbitrary character.

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Nigerian Government. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government although it was given the opportunity to do so.

5. The communication submitted by the source, a summary of which was forwarded to the Government, concerned the following persons:

(a) Annimmo Bassey, aged 37, poet, environmental activist, Secretary-General of the Association of Nigerian Authors, Chairman of the Environmental Rights Action, Chairman of the Southern Zone of the Civil Liberties Organization and leading member of the newly formed Oilwatch International Network which supports communities situated in areas where the oil industry operates, was reportedly arrested on 5 June 1996, as he was leaving Nigeria to Ghana, where he had planned to attend an environmental conference organized by Friends of the Earth. Apparently the purpose of Bassey's detention was to prevent him from speaking at the conference. He was reportedly being detained pursuant to Decree No. 2 of 1984 which allows for indefinite detention without charge. Bassey was reportedly being held at the headquarters of the Federal Investigations and Intelligence Bureau in Ikoyi, Lagos;

(b) George Onah, a journalist who is the defence correspondent for an independent newspaper, the Vanguard, was reportedly arrested on 10 May 1996, in connection with an article he wrote concerning the reshuffling of military personnel. It has been reported that he was held for a few hours and subsequently released, but that he was re-arrested five days later. The source alleged that he was being detained incommunicado and was being pressured to reveal his sources;

(c) Rebecca Onyabi Ikpe, civil servant, sister-in-law of colonel Bello-Fadile, whose date of detention has not been reported was presently being held in Zaria prison, in Kaduna State. It has been reported that colonel Bello-Fadile was charged with treason and that he was also in detention. The source alleged that Ikpe was charged with being an accessory after the fact, in connection with treason, for having passed to others the text of the defence submission of colonel Bello-Fadile. It has also been alleged that Ikpe was tried by a secret military tribunal and was sentenced on 14 July 1995, to life imprisonment. On 1 October 1995, that sentence was reportedly commuted to 15 years of imprisonment.

6. It appears from the facts as described above that the persons concerned are being detained merely for having exercised their right to freedom of opinion and expression; and that in the case of Rebecca Onyabi Ikpe, her conviction was pronounced after a trial by a secret military tribunal, where defendants have neither the right to be informed in detail of the charges brought against them, nor the right to be defended by a counsel of their own choice, nor the right to dispose of sufficient time to prepare their defence, nor the right to appeal against their conviction and sentence. As regards the cases of Annimmo Bassey and George Onah, the Working Group has taken note of the fact that Decree No. 2 of 1984 on State Security was resorted to, and of the fact that this Decree allowed for the incommunicado detention for an unlimited period of time, without charge or trial.

7. It follows from the above that the detention of the above-mentioned persons is arbitrary since, on the one hand, it is in violation of all or part of the international provisions relating to the right to a fair trial of such gravity that it confers on this detention an arbitrary character (article 10

of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights, and category III of the principles applicable in the consideration of the cases submitted to the Working Group); and, on the other hand, since this detention was imposed in violation of these persons' right to freedom of opinion and expression (article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, and category II of the principles applicable in the consideration of the cases submitted to the Working Group).

8. In the light of the above the Working Group decides:

> The detention of Annimmo Bassey, George Onah and Rebecca Onyabi Ikpe is declared to be arbitrary being in contravention of articles 10 and 19 of the Universal Declaration of Human Rights and articles 14 and 19 of the International Covenant on Civil and Political Rights to which the Federal Republic of Nigeria is a party, and falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group.

9. Consequent upon the decision of the Working Group declaring the detention of Annimmo Bassey, George Onah and Rebecca Onyabi Ikpe to be arbitrary, the Working Group requests the Nigerian Government to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 3 December 1996.

DECISION No. 38/1996 (NIGERIA)

Communication addressed to the Nigerian Government on 20 February 1996.

Concerning: George Mbah and Mohammed Sule, on the one hand and the Federal Republic of Nigeria, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 37/1996.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Nigerian Government. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government although it was given the opportunity to do so.

5. The communication submitted by the source, a summary of which was forwarded to the Government, concerned the following persons:

(a) George Mbah, an assistant editor with the weekly magazine "Tell", was reportedly arrested on 5 May 1995. In July 1995 he was reportedly tried in secret by a special military tribunal and sentenced to life imprisonment for "publishing materials which could obstruct the work of the coup plotters tribunal" and for "misleading the public". On 10 October 1995 it was announced that the sentence was reduced to 15 years in prison. It was alleged that the trial of Mr. Mbah, and of other journalists tried with him, violated several of the internationally accepted norms regarding the right to a fair trial. In particular, it was alleged that they had no right to see the details of the charges against them, to be defended by the lawyer of their choice, to be able to prepare their trial properly, to be tried in an open court, and to appeal against their sentences;

(b) Mohammed Sule, an author, aged 39, was arrested on 9 February 1995 and held since that date without charge or trial. It was believed that he was held under the State Security (Detention of Persons) Decree, No. 2, of 1984 which allows for the incommunicado detention without charge or trial for an indefinite period of time. He was believed to be held in Kaduna prison. It was alleged that Mr. Sule was subjected to torture at the initial stage of his detention, at Aso Villa, the official residence of President Sani Abacha. It

was thought that he may be held in connection with a documentary film he was planning to make reviewing the Nigerian cultural, economic and political life since the 1980s, for which he reportedly received a verbal agreement from the President's Press Office in November 1994.

6. The facts as described above are not new to the Working Group as regards Nigeria. In several decisions concerning that country the Working Group noted the resorting to various emergency procedures against journalists, authors, political leaders, human rights defenders, etc. who are often sentenced to heavy prison terms (and sometimes even to the capital punishment) for merely having peacefully exercised their right to freedom of opinion and expression. Convictions are pronounced after a trial by a secret military tribunal, where defendants have neither the right to be informed in detail of the charges brought against them, nor the right to be defended by a counsel of their own choice, nor the right to dispose of sufficient time to prepare their defence, nor the right to appeal against their conviction and sentence. This is what happened in the case of George Mbah. As regards the case of Mohammed Sule, the Working Group has taken note of the fact that Decree No. 2 of 1984 on State Security was resorted to, and of the fact that this Decree allowed for the incommunicado detention for an unlimited period of time, without charge or trial.

7. It follows from the above that the detention of the above-mentioned persons is arbitrary since, on the one hand, it is in violation of all or part of the international provisions relating to the right to a fair trial of such gravity that it confers on this detention an arbitrary character (article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights, and category III of the principles applicable in the consideration of the cases submitted to the Working Group); and, on the other hand, since this detention was imposed in violation of these persons' right to freedom of opinion and expression (article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, and category II of the principles applicable in the consideration of the cases submitted to the Working Group).

8. In the light of the above the Working Group decides:

> The detention of George Mbah and Mohammed Sule is declared to be arbitrary being in contravention of articles 10 and 19 of the Universal Declaration of Human Rights and articles 14 and 19 of the International Covenant on Civil and Political Rights to which the Federal Republic of Nigeria is a party, and falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group.

9. Consequent upon the decision of the Working Group declaring the detention of George Mbah and Mohammed Sule to be arbitrary, the Working Group requests the Nigerian Government to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 3 December 1996.

DECISION No. 39/1996 (MOROCCO)

Communication addressed to the Moroccan Government on 2 August 1996.

Concerning: Andala Cheikh Abilil, Abdellah Ouali Lekhfaouni, Salek Leghdat Bambari, Abdellah Dafa Mohamed, Mohamed M'barek Kharchi, Saleh Mohamed-Lamin Baiba, Abdellah Mustapha Sid-Ahmed, Sid-Ahmed Ahmed Mustafa, Ahmed Nabt Ahmed, Mansour Ali Sid-Ahmed and Driss Houssein Khatari El Fakraoui, on the one hand, and the Kingdom of Morocco, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiry of more than 90 days since the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its attention.

3. (Same text as paragraph 3 of Decision No. 37/1996.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Moroccan Government. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government although it was given the opportunity to do so.

5. According to the communication, a summary of which was transmitted to the Government, several young Sahrawis were allegedly arrested on 20 May 1996 by the Moroccan authorities in the town of Boujdor for distributing leaflets and brandishing flags of the self-proclaimed "Sahrawi Arab Democratic Republic" (RASD) during a demonstration. Among those arrested were: Andala Cheikh Abilil, Abdellah Ouali Lekhfaouni, Salek Leghdat Bambari, Abdellah Dafa Mohamed, Mohamed M'barek Kharchi, Saleh Mohamed-Lamin Baiba, Abdellah Mustapha Sid-Ahmed, Sid-Ahmed Ahmed Mustafa, Ahmed Nabt Ahmed and Mansour Ali Sid-Ahmed.

6. According to the source, the young persons arrested were immediately transferred, blindfolded, to the secret prison of the Mobile Intervention Unit (CMR) at El Ayoun, where they were allegedly interrogated and ill-treated. Some of them were sentenced by a court in El Ayoun to prison terms of between 18 months and seven years.

7. Another young Sahrawi, Driss Houssein Khatari El Fakraoui, was allegedly arrested by the Moroccan police at his home at El Housseima on 22 January 1996, and sentenced on 7 February 1996 by the Appeal Court of El Housseima to eight years' imprisonment. The Working Group has not been informed of the main charges of which he was found guilty.

8. According to the source, the trials of the young Sahrawis in question were not fair and the prison sentences imposed were disproportionate to the acts of which they were accused.

9. The facts as described above are of the same nature as those which the Working Group had cause to consider in its Decision No. 4/1996, in that the persons concerned were arrested during pro-RASD demonstrations at which they distributed leaflets or waved flags. As the Working Group has already pointed out, the sentences imposed on these persons are usually handed down at the end of summary trials, despite the fact that, in demonstrating, these people were merely engaging in the peaceful exercise of their right to freedom of opinion and expression, since it was not reported that they had used violence.

10. The Working Group is therefore of the opinion that the detention of the above-mentioned persons is arbitrary, since it took place in violation of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, to which the Kingdom of Morocco is a party.

11. In the light of the above, the Working Group decides that the detention of the above-mentioned persons is considered to be arbitrary, being in contravention of articles 9 and 19 of the Universal Declaration of Human Rights and of articles 9 and 19 of the International Covenant on Civil and Political Rights, to which the Kingdom of Morocco is a party, and falling within category II of the principles applicable in the consideration of cases submitted to the Working Group.

12. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of Morocco to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles contained in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 3 December 1996.

DECISION No. 40/1996 (GAMBIA)

Communication addressed to the Government of the Gambia on 20 February 1996.

Concerning: Jobarteh Manneh and 24 others, Hussainu Njai and 9 others, on the one hand, and the Gambia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 37/1996.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Gambian Government. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government although it was given the opportunity to do so.

5. According to the communication submitted by the source, a summary of which was forwarded to the Government, 35 persons were reportedly arrested around 12 October 1995 and were held at a disused hangar at Fayara army barracks in Bakau, outside the capital. It was alleged that they have been denied visits by their families and have experienced serious difficulties in gaining access to their lawyers. Among the 35 detainees were 25 alleged supporters of the People's Progressive Party (PPP) who were reportedly charged with sedition and released on bail on 12 January 1996, but were rearrested later on the same day. Their names were reported as follows: Jobarteh Manneh, Batch Samba Jallow, Mama Jawara (f), Ismaila Jawara, Adama Ceesay (f), Alhaji Mori Kebba Saidykhan, Lang Hawa Sonko, Bakary Camara, Sainey Faye, Omar Bah, Saraney Jatta, Fansu Jawara, Yaya Darboe, Foday Ceesay, Ebrima Sonko, Kosso Taylor (f), Malamin Sonko, Landing Camara, Kebba Tunkara, Lamin Kanaju, Mustapha Dibba, Mustapha Ceesay, Dabo Colley, Mobou Kebbeh and Buna Kebbeh. They had reportedly been granted bail by the magistrate in accordance with the provision of the decree which allows for bail after 90 days in custody. The source reported that the legal basis for their rearrest was unclear. Although a decree was reported to have been issued on 10 January permitting their rearrest, the source affirmed that this decree was not invoked in court on 12 January by the Deputy Director of Public Prosecutions acting as counsel for the prosecution, which suggested that it

had not in fact been issued by that time. The source concluded that a retrospective decree was used to justify illegal acts taken by the authorities.

6. At least 10 other persons who were also reportedly arrested around 12 October 1995 remained held without charge, in contravention of the above-mentioned decree which provides for a detainee to be brought before a court within 90 days. Their names were reported as follows: Hussainu Njai, Alagi Amadi Sabally, Mamadou Cadicham, Omar Jallow, Malang Fatty, Ansumana Fadera, Babucarr Ceesay, Mohamed Lamin Ba, Modou Jammeh and Saidy Wan.

7. It appears from the facts as described above:

(a) With regard to Jobarteh Manneh and 24 others who are alleged supporters of the PPP, the former Party in power: the fact that they were rearrested on 12 January 1996 even though they had just been released on bail several hours earlier after having been kept in custody for 90 days, appears to be arbitrary, since it cannot be linked to any legal basis. In fact, as noted by the source without being challenged by the Government despite the opportunity given to it, the decree of 10 January 1996 which would have permitted the rearrest was not invoked by the Prosecution at the hearing on 12 January 1996; one can only deduce therefore that this decree did not exist at that time and that a decree was used to justify retrospectively illegal acts taken by the authorities;

(b) With regard to Hussainu Njai and nine others, their continued detention beyond the 90-day legal deadline for custody, without being brought before a judge, as provided for by the Gambian law, also cannot be linked to any legal basis.

8. It follows from the above considerations that the detention of all the above-mentioned persons is arbitrary as it cannot be linked to any legal basis (category I of the principles applicable in the consideration of the cases submitted to the Working Group).

9. In the light of the above the Working Group decides:

> The detention of the afore-mentioned 35 persons is declared to be arbitrary being in contravention of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights to which the Gambia is a party, and falling within category I of the principles applicable in the consideration of the cases submitted to the Working Group.

10. Consequent upon the decision of the Working Group declaring the detention of the afore-mentioned 35 persons to be arbitrary, the Working Group requests the Government of the Gambia to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 3 December 1996.

DECISION No. 41/1996 (LEBANON)

Communication addressed to the Lebanese Government on 20 February 1996.

Concerning: Ziad Abi-Saleh and Jean-Pierre Daccache, on the one hand, and the Lebanese Republic, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as paragraph 3 of Decision No. 37/1996.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Lebanese Government. The Working Group transmitted the reply provided by the Government to the source that provided the information and received its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made, the Government's reply thereto and the comments made by the source.

5. According to the communication, a summary of which was transmitted to the Government, Ziad Abi-Saleh and Jean-Pierre Daccache, former members (until 1990) of General Michel Aoun's Partisan Brigade were arrested on 21 and 22 September 1992 respectively, suspected of being accomplices of Captain Imad Abboud. The latter was an explosives expert who, according to the source, on 29 August 1992 was engaged in making a bomb in order to assassinate a candidate in the legislative elections when an explosives-handling error cost him his life. Following interrogation and the torture to which they were allegedly subjected at the Ministry of Defence they finally signed confessions which they were not shown and in which they admitted having booby-trapped the car belonging to Haykl Khazen in order to intimidate his brother Rachid Khazen, candidate in the legislative elections. They were tried on 24 April 1993 by the Beirut Military Court and sentenced to seven years' imprisonment for transporting weapons and booby-trapping Haykl Khazen's car. Their sentence was subsequently reduced on appeal to five years' imprisonment. Both are being held in Roumieh prison. The source maintains that these persons were sentenced despite the fact that they had told the judge that their confessions had been obtained under torture.

6. According to the source these persons were at a scout camp in Aamchit at the time when they were alleged to have committed the offences of which they are accused, and they made their own way to the Ministry of Defence as soon as

they knew that they were being sought. Moreover the only real evidence on the basis of which they were sentenced were the confessions extorted from them under torture, which renders them null and void.

7. In its reply, the Lebanese Government pointed out that the above-mentioned persons were arrested for the transport of explosive materials and for terrorist acts carried out using explosives during 1992. They expressly acknowledged these facts to the examining magistrate. After an indictment was drawn up against them by the examining magistrate on 15 December 1992, they were brought before the Military Court which sentenced them at a public hearing to seven years' imprisonment, under articles 5 and 6 of the act of 11 January 1958. The Military Court of Cassation reduced the sentences of Saleh and Daccache on appeal to five years' imprisonment.

8. The source maintains, in the initial communication as well as in the comments on the Government's reply, that the confessions purported to be by Saleh and Daccache were extorted under torture, and moreover that these two persons, who were at a scout camp at the time of the alleged acts of which they were accused, proceeded to the Ministry of Defence as soon as they heard that they had been summoned, which would appear to prove their good faith. Regarding this matter the Working Group notes, on the one hand that the source does not provide evidence that the torture referred to actually took place and, on the other, that it is not within its competence, subject to article 15 of the Convention against Torture, to call into question a sentence by reviewing the evidence on which the judgement was based, which seems to be what it is being called upon to do. Moreover, the Group notes that the source does not question the fact that the trial was held in a normal manner or that the two persons concerned were able to make full and effective use of the judicial remedies available to them.

9. In the light of the above, the Working Group decides that the detention of Ziad Abi-Saleh and Jean-Pierre Daccache is declared not to be arbitrary.

Adopted on 3 December 1996.

DECISION No. 42/1996 (INDONESIA)

Communication addressed to the Government of Indonesia on 20 February 1996.

Concerning: Tri Agus Susanto Siswowihardjo on the one hand and the Republic of Indonesia on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. [Same text as paragraph 3 of Decision No. 37/1996.]

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of Indonesia. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made, the response of the Government thereto and the comments received from the source.

5. According to the communication, a summary of which was transmitted to the Government, Tri Agus Susanto Siswowihardjo, aged 29, editor and leading member of the "Pijar" human rights group, was reportedly arrested on 9 March 1995 by policemen at the "Pijar" offices in Jakarta. On 11 September 1995 he was found guilty of "expressing hostility, hatred or contempt of the Government", under article 134 of the Indonesian Penal Code, and was sentenced to two years in prison. The sentence was upheld in appeal. Even the Supreme Court has upheld the verdict of the court of First Instance of Central Jakarta.

6. Tri Agus apparently started his career as a journalist in 1990. In 1993 he reportedly became a full-time worker for the human rights organization "Pijar". With the banning of a number of newspapers in June 1994 Tri Agus was learnt to have been at the forefront of the campaign against the suppression of freedom of expression in Indonesia, writing articles for the Kabor Dari Pijar (KDP), which magazine he occasionally edited. His arrest, however, in March 1995 was the result of an article in the KDP in which he interviewed Adnan Buyung Nasution, a leading human rights activist and director of the Indonesian Legal Foundation. Tri Agus gave the article the following title: "This country is in turmoil because of a man named (President) Soeharto", a quote from the interview with Nasution.

7. On 20 February 1996 the Working Group forwarded to the Republic of Indonesia the allegations of the source referred to above. The Government of Indonesia in response on 10 May 1996 has made the following points:

(a) That the right to freedom of expression and opinion is not prima facie absolute and unlimited both in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights;

(b) That the right to freedom of expression and opinion is subject to the law of defamation, libel and slander;

(c) That Tri Agus unfortunately defamed the President and Vice-President of the Republic of Indonesia;

(d) That the remark attributed to Adnan Buyung Nasution that Indonesia is destroyed by someone named Soeharto was not made by Nasution as testified by him at the trial and that Tri Agus had made up his own story and published his own defamatory remarks under the guise of an interview in his unlicensed publication;

(e) That the integrity of Tri Agus was highly questionable as he was clearly violating the code of ethics of journalism as well as the principle of good faith and honesty;

(f) That Tri Agus was not denied due process. He was represented by a group of lawyers. The trial court consisting of a panel of three judges found him guilty of wilfully defaming the President of the Republic. The decision was upheld at the Supreme Court;

(g) That the fundamental elements of article 134 of the Indonesian Penal Code were established. The material facts and evidence showed that:

- Tri Agus, by blatantly manipulating the interview, plainly shows that an element of malice indeed existed.

- Tri Agus, by wilfully and intentionally publishing his own defamatory article, evidently had the deliberate intention of injuring reputation, or of provoking adverse, derogatory or unpleasant feelings or opinions against President Soeharto.

- Tri Agus, by distributing his June edition of KDP which contained his defamatory article to more than four people and launching baseless and unsubstantiated allegations, evidently had the intention to expose the President to contempt, hatred, ridicule or obloquy.

8. The only issue that requires determination is whether the publication of an alleged interview in criticising the role of President Soeharto and holding him responsible for the turmoil in Indonesia, falls fowl of the protections guaranteed under the article 19 of the Universal Declaration of Human Rights. Issues relating to due process are not germaine to the determination of this question. Even assuming that the alleged statement could not have been attributed to Nasution, the issue will still have to be decided on the

touchstone of the rights guaranteed and referred to herein above. The integrity, or lack of it, of Tri Agus in violating the code of ethics of journalism is again not germaine to the issue. That all the elements of article 134 are satisfied for convicting Tri Agus does not take away from the conclusion that he has been convicted for expressing an opinion against President Soeharto. The right to hold an opinion and expressing it freely is the core of the right to freedom of expression. Even if the opinion of Tri Agus is erroneous, he has the right to believe in it and to express it. The Working Group believes that the conviction and sentence meted out to Tri Agus is violative of his right guaranteed under article 19 of the Universal Declaration of Human Rights.

9. In the light of the above the Working Group decides:

(a) The detention of Tri Agus Susanto Siswowihardjo is declared to be arbitrary being in contravention of article 19 of the Universal Declaration of Human Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group;

(b) The Working Group further decides to transmit the present decision to the Special Rapporteur on freedom of opinion and expression.

10. Consequent upon the decision of the Working Group declaring the detention of Tri Agus Susanto Siswowihardjo to be arbitrary, the Working Group requests the Government of the Republic of Indonesia to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights.

Adopted on 3 December 1996.

DECISION No. 43/1996 (PERU)

Communication addressed to the Government of Peru on 29 February 1996.

Concerning: Sybila Arredondo Guevara, on the one hand, and the Republic of Peru, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as paragraph 3 of Decision No. 37/1996.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Peru. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case.

5. This case, described below, was presented to the Working Group as follows: Sybila Arredondo Guevara, an anthropologist of dual Chilean and Peruvian nationality, born in 1935, was allegedly detained in 1983 in Lima and accused of collaboration with Sendero Luminoso, terrorism, assisting Sendero Luminoso and financing subversive activities. Ms. Arredondo was allegedly sentenced to 12 years' imprisonment; the judges who tried her case, as well as the prosecutor, were hooded; the prison terms to which she was sentenced were to be served consecutively and no release date was fixed. The Group was also informed that Ms. Arredondo has been cleared of two of the three legal proceedings still pending. According to the source, Ms. Arredondo is detained in extremely harsh conditions in the women's prison "Penal de Santa Mónica" in Chorrillos, Lima, and her state of health is a source of considerable concern.

6. Having been consulted, the Government informs the Group that Matilde María Sybila Arredondo's state of health is normal. This is the conclusion reached by Dr. Aldo Poma Torres, the forensic physician who visited her in the company of Dr. Ana María Calderón Boy, Provincial Prosecutor of the 30th Provincial Criminal Prosecution Office of Lima, on 23 August 1996.

7. The Working Group has received an invitation from the Government of Peru to visit the country. This visit is of vital importance for the adoption of a decision in this case, since it will be possible to evaluate the functioning

of the so-called "faceless" tribunals and the guarantees of due process which might have been violated, even if the explanations provided by the Government are valid.

8. As on previous occasions, the Group decides to leave the decision on this case pending until after its visit to Peru, which will provide it with the necessary background information, in accordance with its methods of work.

9. In the light of the above, the Working Group decides to keep the case pending until it has carried out its planned visit to the Republic of Peru.

Adopted on 3 December 1996.

DECISION No. 44/1996 (COLOMBIA)

Communication addressed to the Government of Colombia on 3 October 1995.

Concerning: Jorge Luis Ramos, Rafael Jaramillo, Víctor Manuel Huérfanos, Alvaro Solano Martínez and José Tiberio Beltrán, on the one hand and Colombia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. The Working Group also notes that the Government concerned has informed the Group that the above mentioned persons are no longer in detention.

4. In the context of the information received and having examined the information available to it, and without pre-judging the nature of the detention the Working Group decides to file the cases of Jorge Luis Ramos, Rafael Jaramillo, Víctor Manuel Huérfanos, Alvaro Solano Martínez and José Tiberio Beltrán.

Adopted on 3 December 1996.

DECISION No. 45/1996 (PERU)

Communication addressed to the Government of Peru on 29 February 1996.

Concerning: Lori Berenson, on the one hand, and the Republic of Peru, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as paragraph 3 of Decision No. 37/1996.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Peru. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case.

5. The Working Group considers that:

(a) According to the source, Lori Berenson, an American citizen, was sentenced on 11 January 1996 by a "faceless" military tribunal to life imprisonment for the crime of "betraying the country". It is alleged that Ms. Berenson was kept for more than five weeks in solitary confinement, without access to a lawyer, and that during this time she was subjected to intensive psychological manipulation.

(b) Having been consulted, the Government informs the Group that the person on behalf of whom the appeal is made was arrested on 30 November 1995 together with other persons, all members of the Tupac Amaru Revolutionary Movement, during an armed confrontation with the police. The persons arrested were preparing to engage in subversive acts, namely, breaking into the National Congress in order to take some of its members hostage so as to obtain the freedom of the group's militants. It adds that Ms. Berenson was tried by a military court, which fully respected the rules of due process, and sentenced for the crime of betraying the country, covered by and punishable under Decree-Law 25659.

(c) The Working Group has received an invitation from the Government of Peru to visit the country. This visit is of vital importance for the adoption of a decision in this case, since it will be possible to evaluate the

functioning of the so-called "faceless" tribunals and the guarantees of due process which might have been violated, even if the explanations provided by the Government are valid.

(d) As on previous occasions, the Group decided to leave the decision on this case pending until after its visit to Peru, which will provide it with the necessary background information, in accordance with its methods of work.

6. In the light of the above, the Working Group decides to keep the case pending until it has carried out its planned visit to the Republic of Peru.

Adopted on 3 December 1996.

DECISION No. 46/1996 (PERU)

Communication addressed to the Government of Peru on 20 February 1996.

Concerning: María Elena Loayza Tamayo, on the one hand, and the Republic of Peru, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as paragraph 3 of Decision No. 37/1996.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Peru. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case.

5. The Working Group considers that:

(a) According to the source, María Elena Loayza Tamayo, professor at San Martín de Porres University, was arrested on 6 February 1993 by agents of the Anti-Terrorism Department (DINCOTE). She was accused of the crime of terrorism, on the basis of a denunciation made under the Repentence Law by a student at the same university who had been preparing a thesis under the guidance of Ms. Loayza and who had been arrested previously. The precise charge is militancy of behalf of Sendero Luminoso and, specifically, being the militant known as "Rita", an important leader of this group. Although the statements made by the student were not verified as required by law, the professor was arrested, accused and sentenced. She was held incommunicado for 10 days and, according to the allegations, was raped and ill-treated. She was initially accused of the crime of betraying the country before the Special Naval Court under military law, which acquitted her in first instance on 5 March 1993; on appeal by the Military Prosecutor she was sentenced to 30 years' imprisonment - a sentence which was set aside by the Supreme Council of the Military System of Justice (24 September 1993), which ordered her to be tried by the ordinary courts for the crime of terrorism. The trial took place before the 43rd Provincial Court in Lima and she was sentenced by the "faceless" ourt to 20 years imprisonment for this offence. Appeal proceedings were initiated before the Supreme Court of Justice. The communication maintains that the accusations are unfounded and that Ms. Loayza is not a member of Sendero Luminoso, that she has always criticized their activities, and that the alleged "Rita" is someone quite different whom it has not been possible to arrest. It is maintained that, during the second trial, the ordinary court did not have before it the evidence presented by the defence.

(b) Having been consulted, the Government confines itself to answering as follows: "It was stated that the custodial penalty of 20 years for the crime of terrorism could not be set aside".

(c) The communication alleges a series of procedural irregularities, such as arrest without a warrant in a case not involving flagrante delicto; arbitrary detention incommunicado; denial of real access to a lawyer, since the lawyer only made a token appearance when she was questioned; and trial by a "faceless" court which failed to ensure the necessary guarantees of independence and impartiality.

(d) The Working Group has received an invitation from the Government of Peru to visit the country. This visit is of vital importance for the adoption of a decision in this case, since it will be possible to evaluate the functioning of the so-called "faceless" tribunals and the guarantees of due process of law which they might have been violated, even if the explanations provided by the Government are valid.

(e) The Group has received many communications alleging discrepancies between Act No 25.475 and international human rights instruments, a matter on which the Group will issue a statement after its visit to Peru.

(f) As on previous occasions, the Group decided to leave the decision on this case pending until after its visit to Peru, which will provide it with the necessary background information, in accordance with its methods of work.

6. In the light of the above the Working Group decides to keep the case pending until it has carried out its planned visit to the Republic of Peru.

Adopted on 3 December 1996.

DECISION No. 47/1996 (PERU)

Communication addressed to the Government of Peru on 26 August 1994.

Concerning: Fresia Calderón Gargate, on the one hand, and Peru, on the other.

1. With reference to the above-mentioned communication, the Working Group, in its decision No. 12/1995 decided to keep the case of Fresia Calderón Gargate pending until it received further information.

2. The Working Group notes with appreciation the information received from the Government of Peru that Ms. Fresia Calderón Gargate is no longer in detention.

3. In the context of the information received and having examined the available information, and without prejudging the nature of the detention, the Working Group decides to file the case of Fresia Calderón Gargate under the terms of paragraph 14.1 (a) of its methods of work.

Adopted on 3 December 1996.

DECISION No. 48/1996 (PERU)

Communication addressed to the Government of Peru on 7 February 1995.

Concerning: Jesús Alfonso Castiglione Mendoza, on the one hand, and Peru, on the other.

1. With reference to the above-mentioned communication, in respect of which the Government of Peru did not provide a reply within 90 days, the Working Group, in its decision No. 22/1995 decided to keep the case of Jesús Alfonso Castiglione Mendoza pending until it received further information.

2. The Working Group notes the information received from the Government of Peru on 2 December 1996, that Mr. Castiglione Mendoza is no longer in detention.

3. In the context of the information received and having examined the available information, and without prejudging the nature of the detention, the Working Group decides to file the case of Jesús Alfonso Castiglione Mendoza under the terms of paragraph 14.1 (a) of its methods of work.

Adopted on 3 December 1996.

DECISION No. 49/1996 (PERU)

Communication addressed to the Government of Peru on 4 May 1994.

Concerning: Mayela Alicia Huamán Morales, on the one hand, and Peru, on the other.

1. With reference to the above-mentioned communication, in respect of which the Government of Peru did not provide a reply within 90 days, the Working Group, in its decision No. 42/1995 decided to keep the case of Mayela Alicia Huamán Morales pending until it received further information.

2. The Working Group notes the information received from the Government of Peru on 2 December 1996, that Ms. Huamán Morales is no longer in detention.

3. In the context of the information received and having examined the available information, and without prejudging the nature of the detention, the Working Group decides to file the case of Mayela Alicia Huamán Morales under the terms of paragraph 14.1 (a) of its methods of work.

Adopted on 3 December 1996.

OPINION No. 1/1997 (IRAQ)

Communication addressed to the Government on 20 January 1997.

Concerning: Qadir Rasoul Ismail, Othamn Qarny Nury, Zahid Ahmad Nabi, Gharib Omar Marouf, Jamal As'ad Qadir, Kamal As'ad Qadir, Tahir Rahman, Kassim Biradud Hussein, Shakhwan Abdullah Qadir, Zahir Shafi' Qarani, Selim Sulaiman Hussein, Loqman Samad Mohammed, Abdulla Ahmad Karim, Idris Ismail Karim, Tawfiq Mohammad, Juma' Omar Khidhir, Khalil Najim Rustam, Hamad Hassan Basit, Farhad Sabir Omar, Abu Zeid Abdulrahman, Majid Abdulrahman, Hadi Abdulrahman Ismail, Sirwan Abdulrahnman Ismail, Ziad As'ad Said, Mehdi Abdulrahman, Kamal Othman Qadir, Ahmad Nuri Mawlood, Khider Abubekir Khider, Faris Mohammad Mehdi and Ali Abduljabbar Mahammad.

The Republic of Iraq is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group regrets that the Government has not replied within the 90-day deadline.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

I. When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (Category I);

II. When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (Category II);

III. When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (Category III).

4. The Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Rapporteur prepared pursuant to resolution 1996/72 of the Commission on Human Rights (E/CN.4/1997/57).

5. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

6. According to the communication submitted by the source, a summary of which was forwarded to the Government, the 30 persons whose names are given below have been subjected to deprivation of liberty, as follows: Qadir Rasoul Ismail, student, born in 1972, arrested on 28 February 1991 in Arbil-Terawa, Othamn Qarny Nury, student, born in 1972, arrested on 1 April 1991 in Kurdistan, Zahid Ahmad Nabi, labourer, born in 1970, arrested on 3 April 1991 in Arbil-Sitaqan, Gharib Omar Marouf, labourer, born in 1952, arrested on 1 March 1991 in Arbil, Jamal As'ad Qadir, soldier, born in 1969, arrested on 21 March 1991 in Arbil, Kamal As'ad Qadir, soldier, born in 1966, arrested on 21 March 1991 in Arbil, Tahir Rahman, soldier, born in 1971, arrested on 3 April 1991 (place not reported), Kassim Biradud Hussein, soldier, born in 1968, arrested on 1 April 1991 in Arbil, Shakhwan Abdullah Qadir, soldier, born in 1968, arrested on 3 April 1991 in Arbil-Qoran, Zahir Shafi' Qarani, soldier, born in 1971, arrested on 3 April 1991 in Arbil, Selim Sulaiman Hussein, soldier, born in 1962, arrested on 3 April 1991 in Arbil, Loqman Samad Mohammed, soldier, born in 1972, arrested on 3 April 1991 in Arbil, Abdulla Ahmad Karim, soldier, born in 1968, arrested on 2 April in Arbil, Idris Ismail Karim, athlete, born in 1972, arrested on 21 February 1991 in Arbil, Tawfiq Mohammad, labourer, born in 1970, arrested on 2 April 1991 (place not reported), Juma' Omar Khidhir, labourer, born in 1970, arrested on 2 April 1991 in Arbil, Khalil Najim Rustam, labourer, born in 1957, arrested on 1 April 1991 in Arbil, Hamad Hassan Basit, male nurse, born in 1968, arrested on 2 April 1991 in Arbil, Farhad Sabir Omar, labourer, born in 1957, arrested on 2 April 1991 in Arbil-Shaqlawa, Abu Zeid Abdulrahman, student, born in 1973, arrested on 21 April 1991 in Arbil-Ainkawa, Majid Abdulrahman, soldier, born in 1971, arrested on 21 April in Arbil-Ainkawa, Hadi Abdulrahman Ismail, labourer, born in 1961, arrested on 3 March 1991 in Arbil, Sirwan Abdulrahnman Ismail, teacher, born in 1968, arrested on 2 April 1991 in Arbil, Ziad As'ad Said, labourer, born in 1968, arrested on 2 April 1991 in Arbil, Mehdi Abdulrahman, labourer, born in 1965, arrested on 2 April 1991 in Arbil, Kamal Othman Qadir, labourer, born in 1979, arrested on 2 April 1991 in Arbil-Ainkawa, Ahmad Nuri Mawlood, labourer, born in 1969, arrested on 2 April 1991 in Arbil-Beni Slawa, Khider Abubekir Khider, soldier, born in 1971, arrested on 21 April 1991 in Arbil, Faris Mohammad Mehdi, soldier, born in 1970, arrested on 1 April 1991 in Kirkuk and Ali Abduljabbar Mahammad, soldier, born in 1970, arrested on 3 April 1991 in Zakho. According to the source, these persons, most of whom are residents of Arbil, were arrested after the uprising of March 1991 and are still being detained in the Abu Ghraib prison, allegedly without ever having been put on trial. It was further reported that the families of these prisoners had not had any news from them for many years and considered them as disappeared.

7. Although the Working Group has brought these allegations to the attention of the Government, the latter has neither challenged them nor expressed reservations about them; the Working Group accordingly considers them to be substantiated as they stand. It wishes to emphasize that one of

the young prisoners, Othmar Qadir, who was born in 1979, was 11 or 12 years old when he was arrested in April 1991, that Idris Ismail Karim, born in 1972, was in all likelihood a minor when arrested in February 1991, and that neither of them is receiving assistance from their parents.

8. As these persons have been detained for more than six years without trial, without the assistance of a lawyer and without their families being informed of their fate, these violations of the right to a fair trial are sufficiently serious for their detention to be classified as arbitrary on grounds of failure to comply with articles 9 and 10 of the Universal Declaration of Human Rights, articles 9.3, 9.4, 10.1 and 14 of the International Covenant on Civil and Political Rights, to which Iraq is a party, article 10.2 (b) of same Covenant guaranteeing the rights of detained juvenile persons, and principles 10, 16.3, 17, 18 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

9. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of the 30 aforementioned persons is arbitrary, as being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9.3, 9.4, 10.1 and 10.2 (b) of the International Covenant on Civil and Political Rights, and falls within category III of the applicable categories to the consideration of the cases submitted to the Working Group.
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> The Working Group also transmits the present opinion to the Committee on the rights of the child, to which Iraq is a State party, as regards the cases of Kamal Othman Qadir and Idris Ismail Karim.

10. Consequent upon the opinion rendered, the Working Group requests the Iraqi Government to take the necessary steps to remedy the situation, and bring it in conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 14 May 1997.

OPINION No. 2/1997 (SYRIAN ARAB REPUBLIC)

Communication addressed to the Government on 9 August 1996.

Concerning: Mazen Kana.

The Syrian Arab Republic is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. (Same text as paragraph 3 of Opinion No. 1/1997.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source but, to date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. According to the communication submitted by the source, a summary of which was forwarded to the Government, Mr. Mazen Kana (son of Subhi Said Kana, a Jordanian national), born in Damascus in December 1954, a civil engineer (graduate of Aleppo University) and a businessman, was reportedly arrested on 20 August 1980, from his home in Damascus by a group of security officers. The reasons for the arrest are not known. His detention has never been acknowledged and it is not known whether he has ever been charged with any criminal offence, or tried. His family was informed by persons who saw Mr. Mazen Kana in prison, that four months after his detention he was transferred to Palmyra (Tadmur) prison. In 1992 his mother received an unofficial confirmation that he was being detained in Palmyra prison: When she went to the military police quarters in Damascus to apply for a permit to visit her son, the responsible officer checked the name in a register and told her that her son was in the Palmyra prison and was to be released shortly. But the family has not received any news from him ever since.

6. In its reply of 24 September 1996, the Government stated that Mazen Subhi Saïd Kana had been arrested on 30 August 1980 on a charge of belonging to an armed terrorist group involved in murders and bomb attacks in Syria. According to the Government, he was tried and sentenced to death by judgement No. 28 of 9 June 1996.

7. The Working Group considers that the Government's reply contains no information on the current status of Mazen Kana with regard to criminal law, and above all gives no indication whether he has been able to lodge any

appeals; this is a particular source of concern to the Group in view of the seriousness of the sentence handed down. Moreover, the Government has not indicated to what group Mazen Kana allegedly belonged and on what grounds it is classified as a "terrorist group". Nor has it provided any details of the murders allegedly committed by the group, of the bomb attacks it allegedly carried out, of the places and dates of the attacks, or of Mazen Kana's alleged role in the organization.

8. Nor does the Government indicate why Mazen Kana was not tried until 15 years after being taken into custody; what judicial or other organ was responsible for ordering his arrest without charges or trial during this period; under what law or legal provision was he held without trial for more than 15 years; and what court was responsible for trying him. Finally, the Government provides no information on the trial, such as the acts for which Mazen Kana was tried and found guilty, the relevant procedural law, whether the accused was present at his trial, what means were made available for his defence, whether a lawyer was present, and whether the trial was public and the verdict handed down in public. The only certain conclusion that can be drawn from the Government's reply is that Mazen Kana was held without trial for more than 15 years and sentenced to death for having belonged to what was described as a terrorist group.

9. The Working Group, having noted that Mazen Kana's trial took place after more than 15 years, that for the whole of this long period of pre-trial detention he was denied contact with his family and, above all, with his lawyer, and that the grounds for his arrest remained unknown during this period, considers that the foregoing acts constitute violations of articles 5 and 10 of the Universal Declaration of Human Rights, of articles 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights, and of principles 2, 4, 9-13, 15-19 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and that these violations are sufficiently serious for the deprivation of liberty to be classified as arbitrary.

10. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Mazen Kana is arbitrary, as being in contravention of articles 5 and 10 of the Universal Declaration of Human Rights and articles 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights, and falls within category III of the applicable categories to the consideration of the cases submitted to the Working Group.
>
> The Working Group also transmits the present opinion to the Special Rapporteur on Extrajudicial, summary or arbitrary executions.

11. Consequent upon the opinion rendered, the Working Group requests the Government of the Syrian Arab Republic to take the necessary steps to remedy the situation, and bring it in conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 14 May 1997.

OPINION No. 3/1997 (KUWAIT)

Communication addressed to the Government on 2 August 1996.

Concerning: Issam Mohammed Saleh al Adwan.

The State of Kuwait is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. (Same text as paragraph 3 of Opinion No. 1/1997.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source but, to date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. According to the communication submitted by the source, a summary of which was forwarded to the Government, Issam Mohammed Saleh Al Adwan, aged 19 at the time of his arrest, was reportedly arrested when a patrol of Kuwaiti military intelligence agents broke into his father's home during the night of 9 May 1991, threatened him at gun point and took him away. The members of the patrol that arrested Issam were identified as follows: Farid Alawadi (commander of the patrol), Khalid Alajami, Khalid al Haddad and Abbas Golomm. The source alleges that Issam Al Adwan remains in detention without charge in an unidentified State Security Intelligence jail (possibly Talha prison) and that his father's numerous appeals to the Kuwaiti authorities for his release during the past four years have remained unanswered. The source reports that a photo of Issam Al Adwan was shown to PLO members who had been imprisoned in Kuwait and were later released, and all of them confirmed that Issam Al Adwan had been with them in jail, but that he was later transferred to another jail. It has been further alleged that the high ranking government authorities approached by Al Adwan's father in the course of his attempts to locate the place of his son's detention, intentionally provided him with misleading and inconsistent information.

6. In its reply of 9 October 1996, the Government asserts that it has no knowledge of Issam Al Adwan's presence in a Kuwaiti prison. It reasserts its decision to facilitate visits to Kuwaiti prisons by any representative of the Centre for Human Rights or the International Committee of the Red Cross (ICRC), unconditionally and without need for prior authorization of such a visit. The Government informs the Working Group that proceedings were

instituted against the patrol following a complaint by Mr. Salah Ahmed Saleh, Issam Al Adwan's uncle and a Jordanian citizen, who contacted the authorities at midnight on 9 May 1991 after being told of the incident by Mrs. Safiya Husseïn Ibrahim, Issam Al Adwan's mother, who was present when he was arrested. The investigation yielded no positive conclusions, the perpetrators of the abduction were not identified and the case was provisionally filed on 27 September 1991 and closed on 21 March 1994.

7. After having examined both the allegations by the source and the Government's reply, and noting that the source has sent no observations in response, the Working Group considers that it does not possess sufficiently precise and consistent information to render an opinion on the case.

8. In view of the foregoing, the Working Group decides to close the case and to transmit the file to the Working Group on Enforced or Involuntary Disappearances.

Adopted on 14 May 1997.

OPINION No. 4/1997 (MALAYSIA)

Communication addressed to the Government on 16 August 1996.

Concerning: Nasiruddin bin Ali, Fakharuddin Ar-Razi bin Abdullah, Pahrol bin Mohd Juoi, Jaafar Ahmad, Mohd Nizamuddin Aashaari, Hashim Ahmad, Hasyim Jaafar, Ahmad Salim Omar and Hashim Muhamad.

Malaysia is not a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group regrets that the Government has not replied within the 90-day deadline.

3. (Same text as paragraph 3 of Opinion No. 1/1997.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the communication received from the source, a summary of which was transmitted to the Government, Nasiruddin bin Ali, aged 37, Fakharuddin Ar-Razi bin Abdullah, aged 30, Pahrol bin Mohd Juoi, aged 36, Jaafar Ahmad, aged 29, Mohd Nizamuddin Ashaari, aged 33, Hashim Ahmad, aged 42, Hasyim Jaafar, aged 40, Ahmad Salim Omar, aged 49 and Hashim Muhamad, aged 30, all former members of the banned Al Arqam Islamic sect have allegedly been ordered to be detained without trial for two years under the Internal Security Act, for "acting in a manner prejudicial to the security of Malaysia". It is alleged that their detention orders may be renewed indefinitely by the Minister of Home Affairs without any reference to courts. The nine men arrested in May and June 1996 are allegedly being held at Kamunting Detention Centre, Taiping, in the State of Perak. These men are allegedly being held for the peaceful expression of their religious beliefs.

6. In the absence of a response from the Government and taking into account the allegations made, the Working Group notes that all the above-mentioned persons have been detained without a trial having commenced. Their detention may be extended beyond two years without reference to courts. Article 9 of the Universal Declaration of Human Rights stipulates that no one shall be subjected to arbitrary detention. Under article 10, everyone is entitled to a fair and public hearing by an independent and impartial tribunal. None of the above-mentioned persons have been formally charged with the commission of an offence. The Working Group believes that the rights of the above-mentioned persons enshrined in articles 9 and 10 of the Universal Declaration of Human

Rights, relating respectively to the right not to be arbitrarily detained and the right to a fair trial, have been contravened, and that the contravention is of such gravity as to confer on the deprivation of liberty an arbitrary character.

7. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Nasiruddin bin Ali, Fakharuddin Ar-Razi bin Abdullah, Pahrol bin Mohd Juoi, Jaafar Ahmad, Mohd Nizamuddin Aashaari, Hashim Ahmad, Hasyim Jaafar, Ahmad Salim Omar and Hashim Muhamad, is arbitrary, as being in contravention of articles 9, 10 and 18 of the Universal Declaration of Human Rights and falls within category III of the applicable categories to the consideration of the cases submitted to the Working Group.

8. Consequent upon the opinion rendered, the Working Group requests the Government of Malaysia to take the necessary steps to remedy the situation, and bring it in conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

Adopted on 15 May 1997.

OPINION No. 5/1997 (INDONESIA)

Communication addressed to the Government on 19 November 1996.

Concerning: Cesaitino Correla, Sesario Freitas, Orlando Morreira, Jacinto Pedro da Costa Xavier, Jose Armindo Morreira, Aniceto Soares, Jose Gomes, Miguel Correira, Fransisco Amat, Pedro da Luz, Luis Pereira, Cesaltino Sarmento Boavida, Jose Soares, Moises Freitas Morreira, Alipio Pascoal Gusmao, Paulino Cabral, Armindo da Costa, Mario Jose Maria, Miguel de Jesus, Antonio Gusmao Freitas and Marcelino Fraga.

The Republic of Indonesia is not a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group regrets that the Government has not replied within the 90-day deadline.

3. (Same text as paragraph 3 of Opinion No. 1/1997.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the communication received from the source, a summary of which was transmitted to the Government, 21 East Timorese, including several minors, were reportedly sentenced to imprisonment for their alleged involvement in riots which took place in Baucau in June 1996. The names of the persons concerned, their age and their sentences, as reported by the source are the following: 1. Cesaitino Correla (aged 21, sentenced to 1 year and 10 months imprisonment); 2. Sesario Freitas (aged 22, sentenced to 1 year and 10 months imprisonment); 3. Orlando Morreira (aged 21, sentenced to 1 year and 10 months imprisonment); 4. Jacinto Pedro da Costa Xavier (aged 17, sentenced to 1 year imprisonment); 5. Jose Armindo Morreira (aged 21, sentenced to 1 year and 8 months imprisonment); 6. Aniceto Soares (aged 22, sentenced to 2 years imprisonment); 7. Jose Gomes (aged 24, sentenced to 4 years and 6 months imprisonment); 8. Miguel Correira (aged 21, sentenced to 1 year and 10 months imprisonment); 9. Fransisco Amat (aged 20, sentenced to 1 year and 8 months imprisonment); 10. Pedro da Luz (aged 16, sentenced to 1 year and 11 months imprisonment); 11. Luis Pereira (aged 19, sentenced to 2 years and 3 months imprisonment); 12. Cesaltino Sarmento Boavida (aged 23, sentenced to 1 year and 8 months imprisonment); 13. Jose Soares (age unknown, sentenced to 1 year and 8 months imprisonment); 14. Moises Freitas Morreira (aged 15, sentenced to 8 months imprisonment); 15. Alipio Pascoal Gusmao (aged 21, sentenced to 1 year and 9 months imprisonment); 16. Paulino Cabral (aged 24, sentenced to 1 year and 7 months imprisonment); 17. Armindo da Costa (aged 21, sentenced to 1 year and 10 months imprisonment); 18. Mario Jose

Maria (aged 22, sentenced to 1 year and 6 months imprisonment); 19. Miguel de Jesus (aged 28, sentenced to 2 years imprisonment); 20. Antonio Gusmao Freitas (aged 22, sentenced to 2 years and 2 months imprisonment); 21. Marcelino Fraga (aged 22, sentenced to 1 year and 3 months imprisonment).

6. The Working Group is informed through the source that these 21 persons allegedly participated in riots which broke out on 10 and 11 June 1996 as a result of a "religious" conflict between Catholics and Muslims which was apparently provoked by a number of the Indonesian army. The above-mentioned 21 persons were reportedly convicted of violence against people and property under article 2, Part 1 of the Emergency Laws No. 132, of 1951. It is alleged that their right to a fair trial was not respected denying each of them their right to: (a) legal representation, (b) presumption of innocence, (c) be tried within a reasonable time, (d) have the court's judgement published and (e) not being compelled to testify against themselves or confess their guilt.

7. In the absence of a response from the Government and taking into account the allegations made, the Working Group notes that each of the above-mentioned persons was entitled to a fair trial. Yet none of them was granted any legal representation during the course of their trial. The Court allegedly did not respect the presumption of innocence; nor was the judgement of the court published. It also emerges from the facts as stated that the accused were compelled to testify against themselves and to confess to their guilt. All this proves that the accused were not granted a fair trial in contravention of article 10 of the Universal Declaration of Human Rights. In these circumstances the Working group believes that the detention of the above-mentioned persons is in contravention of articles 9 and 10 of the Universal Declaration of Human Rights, relating respectively to the right not to be arbitrarily detained and the right to a fair trial, and that the contravention is of such gravity as to confer on the deprivation of liberty an arbitrary character.

8. In the light of the foregoing, the Working Group renders the following opinion:

(a) The deprivation of liberty of the persons above-mentioned is arbitrary, as being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights, and falls within category III of the applicable categories to the consideration of the cases submitted to the Working Group.

(b) The Working Group transmits the cases of Jacinto Pedro da Costa Xavier, aged 17; Pedro da Luz, aged 16 and Moises Freitas Morreira, aged 15, to the Committee on the Rights of the Child.

(c) The Working Group also transmits the present opinion to the Secretary-General, in the framework of resolution 1997/63, paragraph 4 (a) of the Commission on Human Rights.

9. Consequent upon the opinion rendered, the Working Group requests the Government of the Republic of Indonesia to take the necessary steps to remedy the situation, and bring it in conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

Adopted on 15 May 1997.

OPINION No. 6/1997 (UNITED STATES OF AMERICA)

Communications addressed to the Government on 16 October 1996 and 3 February 1997.

Concerning: Félix Gómez, Angel Benito (communication of 16 November 1996) and Cándido Rodríguez Sánchez (communication of 3 February 1997).

The United States of America is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communications.

2. The Working Group regrets that the Government has not replied within the 90-day deadline.

3. (Same text as paragraph 3 of Opinion No. 1/1997.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to communications received from the sources a summary of which was transmitted to the Government, Félix Gómez and Angel Benito have allegedly been deprived of their freedom for over 10 years. The source has further alleged that these persons were deprived of their freedom because they are Cuban nationals. Neither of them is convicted for having committed a crime or a felony. Similarly, Candido Rodríguez Sánchez, a Cuban national, has spent 10 years in a Federal Prison as an immigration detainee even though he has not been convicted of any crime.

6. In the absence of a response from the Government and taking into account the allegations made, the Working Group notes that Félix Gómez, Angel Benito and Cándido Rodríguez Sánchez have been detained for 10 years, none of them has been brought to trial and no formal charges have been communicated to them. The Working Group considers that their detention is without any legal basis. It is also in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

7. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of the persons above-mentioned is arbitrary, as being in contravention of articles 9 and 10 of the

Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls within category I of the applicable categories to the consideration of the cases submitted to the Working Group.

8. Consequent upon the opinion rendered, the Working Group requests the Government of the United States of America to take the necessary steps to remedy the situation, and bring it in conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 15 May 1997.

OPINION No. 7/1997 (KYRGYZSTAN)

Communication addressed to the Government on 3 February 1997.

Concerning: Topchubek Turgunaliev and Timur Stamkulov.

The Kyrgyz Republic is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. (Same text as paragraph 30 of Opinion No. 1/1997.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the sources and received their comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto, as well as the observations by the sources.

5. A summary of the communication submitted by two sources was sent to the Government. It concerns (a) Mr. Topchubek Turgunaliev, a 55-year-old former Rector of the Human Sciences University in Bishkek, who is also a representative of the Erkin Kyrgyzstan (Free Kyrgyzstan) opposition movement, and (b) his former university colleague Timor Stamkulov. According to the sources, Mr. Turgunaliev was sentenced on 8 January 1997 to 10 years' rigorous imprisonment in a correctional labour colony and confiscation of his property. Mr. Stamkulov was sentenced to six years' rigorous imprisonment in the same colony. Both men were found guilty by the Bishkek court of three offences: embezzlement of public or community property belonging to the State or society, under article 88-1, paragraph 1, of the Kyrgyz Criminal Code; abuse of power or public authority, under article 177 of the Code; and forgery committed in an official capacity, under article 182 of the Code.

6. The two men were prosecuted in 1995. In 1994, Mr. Turgunaliev had authorized, in his capacity as rector, a loan of $10,000 from the university for the purposes of business ventures on the part of Mr. Stamkulov, the university's management director. According to one of the sources, the fact that the loan has not been repaid should not give rise to prosecution proceedings for embezzlement of public or community funds, but should be dealt with under civil law. In his testimony to the court, the university's chief accountant stated that the university had no claims against Mr. Turgunaliev. One of the sources considers that the penalties handed down are

disproportionate to the offences committed. According to the sources, the proceedings against Mr. Turgunaliev are politically motivated as punishment for his opposition activities.

7. In its reply of 2 April 1997 (addressed to the Office of the High Commissioner/Centre for Human Rights following a communication submitted to the Government under the "1503 procedure", a copy of which was sent to the Working Group), the Government confirmed that both men had indeed been convicted as charged and received the sentences cited by the sources. It quoted at length the articles of the Criminal Code applied by the Kyrgyz courts, specifying the amendments to the sentences made by the Criminal Division of the Supreme Court, which considered the case (on 18 February 1997, according to the source) and, after having reclassified the offences, reduced the original sentences. Mr. Turgunaliev was finally sentenced to a total of four years' deprivation of liberty in a penal colony. The Supreme Court also annulled the decision of the court of first instance ordering the confiscation of Mr. Turgunaliev's property and banning him from any post entailing financial responsibilities. Mr. Stamkulov was sentenced to a total of three years' imprisonment in a penal colony.

8. In their observations in reply, both sources confirmed the decision handed down on apppeal by the Supreme Court. In addition, the Working Group was informed by the sources that Mr. Turgunaliev, who had been charged with distributing leaflets during the presidential elections, had been detained from 22 December 1995 to 29 April 1996, given a suspended one year sentence and subsequently released. The information provided by one of the sources indicates that in the case of the $10,000 loan, Mr. Stamkulov was never arrested or detained, despite the other source's allegation to the contrary. Finally, according to the most recent information received from both sources, dated 7 and 9 May 1997 respectively, his sentence to a penal colony has not yet been enforced; he is currently living in his flat in Bishkek. The reason for Mr. Turgunaliev's pre-trial arrest on 17 December 1996 was that he had failed to appear at the court hearing the previous day. According to the source, he had not been properly summoned. As a result, he remained in prison for some time, i.e. for the duration of the trial, which ended on 8 January 1997. He reportedly returned to live in his flat in Bishkek until 7 March 1997, when he was taken to Leilek in the region of Osh to a penal colony. The source also reported that Mr. Turgunaliev's lawyer was not authorized to visit him until 21 December.

9. In the light of the information brought to its attention, the Working Group considers that:

In the case of Mr. Timur Stamkulov, the Group takes notes of the fact that he has not been sentenced to any custodial measure;

In the case of Mr. Turgunaliev, the Group considers that it is in a position to render an opinion on the following bases:

(a) In the light of the information gathered, the Group is unable to endorse the view that Mr. Turgunaliev should have been tried under civil law, as the decision taken by the prosecutor to institute criminal proceedings was not contrary to domestic law,

under which the public prosecutor's office may prosecute someone for an offence even if no complaint had been filed by the victim or if the latter has withdrawn his or her complaint. The Working Group further notes that the legislation in question was not criticized by the sources, who essentially focus, in view of their gravity, on the disproportionate nature of the penalties in relation to the offences committed; disproportion no longer existed after the decision of the Supreme Court. The Group also notes that when they classified the acts as criminal offences, the Kyrgyz courts provided sufficient grounds for not treating them as constituting failure to perform a contractual obligation under domestic law.

(b) Regarding the criminal procedural law applicable in Kyrgyzstan, the Working Group considers that although a number of reservations may be expressed, particularly regarding the fact that a lawyer was not involved until four days after the arrest, this fact alone does not constitute a sufficiently serious shortcoming, in terms of the right to a fair trial, for the deprivation of liberty to be characterized as arbitrary.

(c) The Working Group, after having noted that the charges of embezzlement were not disputed, notably by the sources, considers that it does not possess conclusive information to enable it to take the view that Mr. Turgunaliev's prosecution was primarily motivated by political considerations because of his personal commitments.

(d) The procedure before the Supreme Court having led to a final decision, the Working Group has considered, in conformity with resolution 1997/50, paragraph 15, whether the decision, particularly in the light of the law enforced, was in conformity with the relevant provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, to which Kyrgyzstan is a party. In the light of the foregoing, the Working Group has not found sufficient grounds seriously to dispute the conformity either of domestic legislation or of the decision handed down with international standards, particularly those relating to a fair trial.

10. In the light of the above, the Working Group renders the following opinion:

Since Mr. Timur Stamkulov has not been deprived of his liberty, his case should be filed;

The deprivation of liberty imposed on Mr. Topchubek Turgunaliev, as apparent from the information submitted to the Working Group, is not of an arbitrary nature in terms of the Group's methods of work.

Adopted on 15 May 1997.

OPINION No. 8/1997 (FRANCE)

Communication addressed to the Government on 26 July 1996.

Concerning: Mr. Miloud Mekadem.

France is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. The Working Group also notes that the Government concerned has informed the Group that the above-mentioned person is no longer in detention. This fact has also been confirmed by the source of the communication.

4. Having examined the available information and without prejudging the nature of the detention, the Working Group decides to file the case of Miloud Mekadem under the terms of paragraph 14.1 (a) of its methods of work.

Adopted on 15 May 1997.

OPINION No. 9/1997 (VIET NAM)

Communication addressed to the Government on 2 August 1996.

Concerning: Mr. Le Duc Vuong.

Viet Nam is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. The Working Group also notes that the Government concerned has informed the Group that the above-mentioned person is no longer in detention. This fact has also been confirmed by the source of the communication.

4. Having examined the available information and without prejudging the nature of the detention, the Working Group decides to file the case of Le Duc Vuong under the terms of paragraph 14.1 (a) of its methods of work.

Adopted on 15 May 1997.

OPINION No. 10/1997 (MEXICO)

Communication addressed to the Government on 26 November 1996.

Concerning: Gonzalo Sánchez Navarrete, Gerardo López López, Ofelia Hernández Hernández, Patricia Jiménez Sánchez, Brenda Rodríguez Acosta, Celia Martínez Guerrero, Fernando Domínguez Paredes and Joel Martínez González.

Mexico is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. The Working Group notes that the Government concerned has informed the Group that the above-mentioned persons are no longer in detention. This fact was not only denied by the source, to which this information was transmitted.

4. With regard to the accused persons Ofelia Hernández Hernández, Patricia Jiménez Sánchez, Brenda Rodríguez Acosta, Celia Martínez Guerrero, Fernando Domínguez Paredes and Joel Martínez González, the Government informed the Group that they were sentenced for the offence of storing weapons to one year and eight months in prison, which had elapsed during the period of their custody.

5. The accused Gerardo López López and Fernando Domínguez Paredes were sentenced to three years and three months and four years and three months respectively. Having already served half their sentences they benefited from a policy counting detention served on remand in lieu, and are now at liberty.

6. Although the Government has provided no information regarding the minor Gonzalo Sánchez Navarrete, and no further information has been forthcoming from the source, it is possible that he too has been released.

7. Without prejudging the nature of the detention, the Working Group decides to file the cases of Gonzalo Sánchez Navarrete, Gerardo López López, Ofelia Hernández Hernández, Patricia Jiménez Sánchez, Brenda Rodríguez Acosta, Celia Martínez Guerrero, Fernando Domínguez Paredes and Joel Martínez González under the terms of paragraph 14.1 (a) of its methods of work.

Adopted on 18 September 1997.

OPINION No. 11/1997 (MEXICO)

Communication addressed to the Government on 26 November 1996.

Concerning: David John Carmos.

Mexico is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time, although it does not refer to all the information requested.

3. (Same text as paragraph 3 of Opinion No. 1/1997.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source but has not yet received its comments.

5. According to the source, David John Carmos, an American citizen and Bishop of the Iglesia de los Escénicos, was arrested at Mexico City Airport, where he arrived from Brazil, by agents of the Federal Criminal Investigation Service. He was tried for the offence of possession and illegal introduction into the country of the substance MDA, and sentenced to 10 years' imprisonment without remission.

6. According to the source, various irregularities occurred during this case: (a) the evidence presented by the accused was not admitted; (b) the evidence on which the charge was based was not genuine but fabricated by the police; (c) his lawyer, assigned by the State, never appeared before the court; (d) the lawyer that the accused named in his appeal was not accepted; and (e) the accused was not provided with an interpreter.

7. In its reply the Government confines itself to informing the Group that the detained person was tried and sentenced to 10 years' imprisonment and a fine, but makes no reference at all to the alleged procedural irregularities.

8. The Working Group believes that, in order to express an opinion on whether or not the detention is arbitrary, it should determine whether the case is covered by one of the three categories of arbitrariness mentioned previously. With regard to Category I it is clear that the deprivation of liberty has a legal basis, namely, a judgement; with regard to Category II, there is no doubt that the deprivation of liberty is not the result of the legitimate exercise of the human rights mentioned. In this connection, nowhere does the source allege that this is a case of persecution connected

with the functions of the Bishop of Iglesia de los Escénicos, so that the deprivation of liberty cannot be described as arbitrary under this category.

9. This leaves Category III. Here, it is first necessary to disregard the point made in paragraph 6 (b) above, since it is not possible for the Working Group - as it has repeatedly stated - to evaluate the evidence on which a State's decision, whether judicial or extrajudicial, to deprive an individual of their liberty is based. This is neither the function of the Group under the resolution establishing it, nor would it be physically or legally possible for it to do so.

10. On the other hand, the allegations made in (a) refusal to admit evidence presented by the defence; (c) and (d) lack of a defence lawyer chosen by the defendant; and (f) absence of an interpreter, if true, would constitute a serious violation of the rules of due process as set out in article 14.3, introductory part and subparagraphs (a), (b) and (d) of the International Covenant on Civil and Political Rights.

11. However, as the source fails to present any proof of its serious accusations and as, the Government in its reply avoids giving any information on the facts which were transmitted to it in good time, the Group is unable to express an opinion on these various points.

12. The Government's reply having been transmitted to the source, the latter still did not provide the proof that would enable the Group to formulate an opinion.

13. In the light of the above, the Working Group decides to keep the case of David John Carmos pending awaiting further and more up-to-date information, under the terms of paragraph 14.1 (c) of its methods of work.

Adopted on 18 September 1997.

OPINION No. 12/1997 (ETHIOPIA)

Communication addressed to the Government on 2 August 1996.

Concerning: Mammo Wolde.

The Federal Democratic Republic of Ethiopia is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. (Same text as paragraph 3 of Opinion No. 1/1997.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source but, to date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. According to the communication Mammo Wolde, born in 1932, an olympic marathon medallist and former junior local official, has reportedly been detained since 1992 without charge or trial. It was alleged that Mammo Wolde was one of some 1,700 former officials who were accused of having participated in genocide, war crimes or crimes against humanity between 1974 and 1991 under the government of Lieutenant-Colonel Mengistu Haile-Mariam and who have not been formally charged, nor brought before a tribunal and given the opportunity to challenge their virtually indefinite detention. The source reported that the new government has undertaken the task of prosecuting the accused. It has also been reported that the Special Prosecutor's Office (SPO) planned to try detainees in three categories: First, "the policy and decision makers", then "the field commanders, both military and civilian", and finally "the actual perpetrators" of murder, torture and other crimes. Mammo Wolde's case reportedly fell within the last category as he was an official of a local urban-dweller's association (kebelle). According to information received, only persons falling within the first category have so far been charged and brought to trial. Hundreds of detainees were reportedly released by court orders in 1993, as a result of habeas corpus applications or decisions of the SPO, with respect to time limits legally imposed on such types of detentions. The source reported that in late 1993, the appeal division of the Supreme Court barred further habeas corpus applications and ruled that in light of the special circumstances and the seriousness of the crimes involved, the SPO detainees were to remain incarcerated without any specific time limit, until they were charged.

6. In its reply, the Government of the Federal Democratic Republic of Ethiopia does not contest the facts as reported by the source. According to the Government, however, the Special Prosecutor's Office, which is mandated to investigate and prosecute cases of gross and systematic human rights violations during the campaign of mass extermination, is in process of finalizing the investigations and preparing to charge the suspects under detention, including Captain Mammo Wolde. The arraignment of the aforementioned was expected to take place upon the resumption of court proceedings after the summer adjournment. The Government further pointed out that Mammo Wolde was being detained by court order in connection with his suspected involvement in the killing of 14 teenagers in Addis Ababa during the so-called "Red Terror" campaign of 1977-1978 when many innocent lives were lost. The Ethiopian Government affirmed it was conscious of its international and national commitment to fair, impartial and speedy trial. As such, every effort was being made to accelerate the process of bringing charges against all detained officials of the former regime suspected of involvement in genocide, war crimes and/or crimes against humanity.

7. The Working Group deems, as does the source itself, that even though many of the detainees may indeed have been responsible for serious human rights violations or may have personally committed serious crimes, their prolonged detention without trial is not justified.

8. The Working Group finally notes that Mammo Wolde has been detained since 1992 without charge or trial. It further notes that, to date, he has not been given the opportunity to challenge the legality of his detention. For the Working Group, this constitutes a violation of that person's right to a fair trial of such gravity that it confers on his deprivation of liberty an arbitrary character.

9. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Mammo Wolde is arbitrary, as being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls within category III of the applicable categories to the consideration of the cases submitted to the Working Group.

10. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation, and bring it in conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 18 September 1997.

OPINION No. 13/1997 (TUNISIA)

Communication addressed to the Government on 1 October 1996.

Concerning: Mr. Khemais Chamari.

Tunisia is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group notes with appreciation the information forwarded in good time by the Government concerned in respect of the case in question, although it does not refer to all the information requested.

3. The Working Group further notes that the Government concerned has informed the Group that the above-mentioned person is no longer in detention. It is said that he was released on 30 December 1996 for humanitarian reasons.

4. Having examined all the available information and without prejudging the nature of the detention, the Working Group decides to file the case of Khemais Chamari, under the terms of paragraph 14.1 (a) of its methods of work.

Adopted on 18 September 1997.

OPINION No. 14/1997 (RUSSIAN FEDERATION)

Communication addressed to the Government on 11 July 1996.

Concerning: Aleksandr Nikitin.

The Russian Federation is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. (Same text as paragraph 3 of Opinion No. 1/1997.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments.

5. According to the communication Aleksandr Nikitin, aged 43, a retired naval officer, was arrested on 6 February 1996 by the Federal Security Services (FSB), in St. Petersburg. He was allegedly charged with treason under article 64 of the Russian Criminal Code which carried, in case of conviction a prison sentence of 10 to 15 years or, in some cases, the death sentence. The FSB which had allegedly limited Nikitin's access to an attorney of his choice, on the grounds that his affair involved "State secrets". The Constitutional Court of the Russian Federation reportedly declared, on 27 March 1996, this limitation imposed by the FSB as unconstitutional and since that date Mr. Nikitin has been represented by an attorney of his choice, Yuri Schmidt.

6. According to the source Nikitin's arrest and charges were linked with his work, which involved the preparation of a report on the dangers of nuclear waste in the Northern Fleet for the Norwegian non-governmental environmental group Bellona Foundation. The source reported that Nikitin had only supplied to the Bellona Foundation information which had already been published in the Russian media. The source further alleged that Nikitin's arrest occurred in the context of an emerging pattern of persecution of environmental activists who are connected with the Bellona Foundation in Russia. According to the source Nikitin was being detained solely on the grounds of his research and his legitimate activities on behalf of the Bellona Foundation.

7. In its reply, the Government affirmed that the charges against Nikitin included the transmission of secret and top secret information that had not been published by the press and had no connection with the environment. The Government also mentioned the decision by the Constitutional Court of the Russian Federation concerning the Nikitin's right to free choice of counsel.

It denied any persecution of the Bellona Foundation. Finally, it provided the Working Group with details concerning the legal proceedings, the charges and the criminal investigation under way.

8. The observations provided by the source challenged the Government's version, in particular concerning Nikitin's criminal responsibility with regard to the legislation applied in his case and that which the prosecutors and the panel of experts refused to apply. The source further informed the Working Group that Mr. Nikitin was released on 14 December 1996 pending his trial. It added that no date had yet been fixed for the trial and that the charges against Nikitin had not been dropped. Moreover, Mr. Nikitin is allegedly not allowed to travel outside St. Petersburg while awaiting trial.

9. In the light of the foregoing, the Working Group decides to keep the case of Aleksandr Nikitin pending for further information which it expects to receive after his trial is over.

Adopted on 18 September 1997.

OPINION No. 15/1997 (BAHRAIN)

Communication addressed to the Government on 19 November 1996.

Concerning: Maythem Omran Hussain, Ammar Mohammed Ali Mohammed Majeed Al Zaki, Malek Abdallah, Ali Jaffer Mohammed Ali, Nour Alhoda Alqttan, Hassan Mohammed Ali, Sayed Adnan Sayed Jalal, Majeed Abdallah, Hussain Al-Sarah, Adel Hassan, Issa Mohammed, Hussain Abdul Aziz, Ahmed Abbas, Ahmed Abdul Nabi Alsari, Sadeq Jaffer, Mahmmoud Abdul Wahed Al-Shehab, Hassan Ma'touq, Basheir Abdallah Fadhel, Hussain Mohammed Ali, Ahmed Ali Abdul Shahid, Ali S. Mahfoudh S. Mohammed, Mahmmoud Mohammed, Mahmmoud Ahmed Dheif, Hashim S. Taj S. Hashim, Hassan Abdallah Mohammed Hussain, Mohammed S. Yousif S. Abdul Wahab, Mortadha Abdul Nabi Dhaif, Hussain S. Ahmed S. Hassan, Mansoor-Al-Qattan, Fadheil Ahmad Muhsin, Jalil Naser and Abbas Hassan Saif.

The State of Bahrain is not a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. (Same text as paragraph 3 of Opinion No. 1/1997.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments.

5. According to the communication, the 33 persons concerned were minors who had been detained between July and November 1996 under the 1974 State Security Law, article 1, which reportedly provides for the administrative detention without charge or trial for up to three years. The detained minors were allegedly held incommunicado and denied access in particular to their families and doctors. According to the source, these minors were allegedly at high risk of torture. The minors included a boy aged 11 (Basheir Abdallah Fadhel); two boys aged 13 (Hussain Al-Sarah and Issa Mohammed); two boys aged 14 (Hussain Abdul Aziz and Hussain Mohammed Ali) and several others aged between 15 and 18.

6. In its reply, the Government described the allegations as the "recognisable product of the terrorists' propaganda that should be treated with extreme caution". It none the less provided some details about eight of the persons mentioned in the communication, as follows: Ahmed Ali Abdul Shahid, Ali S. Mahfoudh S. Mohammed (aged 16), Mahmmoud Mohammed (aged 18), Mahmmoud Ahmed Dheif, Hashim S. Taj. S. Hashim (aged 18), Hassan A. Mohammed Hussain (aged 17), Mohammed S.Y.S. Abdul Wahab (aged 17), and Hussain S. Ahmed S. Hassan. According to the Government these eight youths are not detained

arbitrarily and issues of their detention, trial and release are determined by due process of law. Of the others mentioned, four have been released (no details are given as to who these are) and there is no record of the remaining 21 persons ever having been detained or held in custody. The Government further provides details on the rules applicable in Bahrain for the detention of children under 15, and describes its cooperation with the ICRC.

7. In its obrervation on the Government's reply, the source refers to 20 out of the 33 minors concerned. It notes that these minors, aged between 11 and 17, were arrested in connection with protests to mark the first anniversary of a hunger strike undertaken by Sheikh Abdul Amir Al-Jamri, a jailed member of the dissolved Parliament. According to the source, these minors had not resorted or incited to violence. The source further alleges that in its response, the Government failed to clarify the legal position of the eight minors admittedly in detention.

8. The Working Group notes with regret that the Government did not react to the allegation concerning the 1974 State Security Law under which the persons concerned are reportedly detained. The Working Group refers to a previous decision it adopted regarding Bahrain, Decision 35/1995, and in particular to paragraphs 5, 9, and 12 to 17 of that Decision. The Working Group recalls its conclusion that the application of the State Security Law is liable to cause grave violations of the right to a fair trial, guaranteed by articles 9 and 10 of the Universal Declaration of Human Rights. The application of the State Security Law is also in contravention of principles 10, 11, 12, 13, 15, 16, 17, 18, 19 and in particular principle 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Furthermore, the Government's reply fails to provide any information about the present legal status of the eight persons whom the Government confirms to be in detention; thus, it is not known whether they stood trial, and if so, what were the charges against them and what were the sentences meted out to them. Moreover, the Government's reply fails to identify the four persons who were reportedly released.

9. It appears from the above, since the Government does not challenge this, that the eight persons admittedly detained, are being held under the 1974 State Security Law. They are deprived of any contact with their families and lawyers and their families have not been informed of the reasons for their arrest and detention. This constitutes a violation of articles 9 and 10 of the Universal Declaration of Human Rights and of principles 10, 11, 12, 13, 15, 16, 17, 18, 19 and 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment which is of such gravity as to confer on the deprivation of liberty an arbitrary character.

10. In the light of the foregoing, the Working Group renders the following opinion:

(a) The deprivation of liberty of Ahmed Ali Abdul Shahid, Al S. Mahfoudh S. Mohammed, Mahmmoud Mohammed, Mahmmoud Ahmed Dheif, Hashim S. Taj. S. Hashim, Hassan A. Mohammed Hussain, Mohammed S.Y.S. Abdul Wahab and Hussain S. Ahmed S. Hassan is arbitrary, as being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and principles 10, 11, 12, 13, 15, 16, 17,

18, 19 and 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and falls within category III of the applicable categories to the consideration of the cases submitted to the Working Group.

(b) The cases of the other 25 persons concerned are kept pending for further information, in keeping with paragraph 14.1 (c) of its methods of work.

11. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation, and bring it in conformity with the standards and principles set forth in the Universal Declaration of Human Rights. The Working Group further requests the Government to study the possibility of amending its legislation in order to bring it into line with the Universal Declaration of Human Rights and the other relevant international standards accepted by the State of Bahrain.

Adopted on 19 September 1997.